ITW

PATENT
Attorney Docket No. 10618.0004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	
Alain Rambach *et al.*	Group Art Unit: 1657
Application No.: 10/528,824	Examiner: Herbert J. Lilling
Filed: March 23, 2005	
For: Method of Detecting Methicillin-Resistant Microorganisms (as amended)	Confirmation No.: 6976

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INTERVIEW SUMMARY UNDER 37 C.F.R. § 1.133(b)

Applicants submit the following comments on the substance of a telephonic interview between the undersigned and Examiner Lilling which took place on January 5, 2009, and in response to the Interview Summary mailed January 9, 2009.

As the Interview Summary indicates, the undersigned telephoned Examiner Lilling on January 5, 2009. Because claims 17-28, 31-34, and 36 had been rejected as allegedly obvious "over the art of record as stated in the reference submitted in the IDS Jan. 10, 2008 "BECKER & Associates OPPO023 GROUNDS FOR OPPOSITION ON BEHALF OF BIORAD PASTEUR, AGAINST EP 1 543 147 (Alain Rambach)" (see Office Action mailed June 13, 2008, page 4), the purpose of the call was to inform the Examiner of the decision of the European Patent Office ("EPO") announced at the close of oral argument on December 16, 2008, in the opposition proceeding. Having considered the written submissions of the two opponents and the patent proprietor, and the arguments made

during the hearing, the Opposition Division of the EPO concluded that the amended claims in the patent proprietor's main request met all of the requirements of the European Patent Convention. *See* Exh. 1. Thus, the EPO has determined in an *inter partes* proceeding that the amended claims are patentable over the prior art cited not only by opponent BioRad Pasteur, but also over the prior art cited by opponent bioMerieux.

The amended claims held patentable by the EPO were submitted in French. Those claims are attached as Exh. 2. Applicants attach as Exh. 3 an English translation of the amended claims.

As the Interview Summary indicates, the "Examiner requested whether the instant claims were examined by the EP drawn to the elected gelled culture whereby the antibiotic was added to the medium before the medium gels?" Interview Summary, page 2. The order or timing of addition of antibiotic to the medium is not a feature of the European claims, nor were these characteristics the basis for arguments supporting patentability made by the patentee in response to the Oppositions. *See* "Reply to Opposition Statements" submitted with the Information Disclosure Statement filed October 28, 2008.

As stated in the Interview Summary, the undersigned indicated that Applicants would submit the EPO's written decision as soon as it is available. The decision has not been issued by the EPO as of this date. According to the Interview Summary, the "Examiner will act on the instant application upon receipt of the intended additional papers for the record." Interview Summary, page 3. Respectfully, there is no basis for the Office to delay examination of this application. Applicants' Request for Reconsideration filed October 28, 2008, fully responds to the Office Action mailed June 13, 2008, and they request reconsideration of the pending claims in view of the remarks made therein consistent with M.P.E.P. § 708, which instructs that "[a]ll amendments before final rejection should be responded to within two months of receipt."

If there is any fee due in connection with the filing of this paper, please charge the fee to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: February 6, 2009

By: _____

Steven P. O'Connor
Reg. No. 41,225
(571) 203-2718

Exhibit 1

Europäisches Patentamt
European Patent Office
Office européen des brevets

Anmeldenummer	Application No.	Numéro de la demande:
	03773805.1	

INFORMATION

Die mündliche Verhandlung am:	The oral proceedings of:	La procédure orale du:
	16.12.08	
hat ergeben:	resulted in:	fut conclue comme suit:
☐ Das europäische Patent wird widerrufen da wenigstens ein Einspruchsgrund der Aufrechterhaltung des europäischen Patents entgegensteht (Art. 101(2) EPÜ).	The European patent is revoked because at least one ground for opposition prejudices the maintenance of the European patent (Art. 101(2) EPC)	Le brevet européen est révoqué car au moins un motif d'opposition s'oppose au maintien du brevet européen (art. 101(2) CBE).
☐ Das europäische Patent wird widerrufen, da unter Berücksichtigung der vom Patentinhaber im Einspruchsverfahren vorgenommenen Änderungen das europäische Patent und die Erfindung, die es zum Gegenstand hat, den Erfordernissen des EPÜ nicht genügen (Art. 101 (3) b) EPÜ).	The European patent is revoked because, account being taken of the amendments made by the patent proprietor during opposition proceedings, the patent and the invention to which it relates were found not to meet the requirements of the EPC (Art. 101(3)(b) EPC).	Le brevet européen est révoqué car il a été établi que, compte tenu des modifications apportées par le titulaire du brevet au cours de la procédure d'opposition, le brevet et l'invention qui en fait l'objet ne satisfont pas aux exigences de la Convention sur le brevet européen (art. 101(3)(b) CBE).
☐ Der Einspruch wird/Die Einsprüche werden zurückgewiesen (Art. 101(2) EPÜ).	The opposition(s) is/are rejected (Art. 101(2) EPC).	L'opposition est/Les oppositions sont rejetée(s) (art. 101(2) CBE).
XX ☒ Es wird festgestellt, dass unter Berücksichtigung der vom Patentinhaber im Einspruchsverfahren vorgenommenen Änderungen das Patent und die Erfindung, die es zum Gegenstand hat, den Erfordernissen des Europäischen Patentübereinkommens genügen (Art. 101(3)(a) EPÜ).	Account being taken of the amendments made by the patent proprietor during the opposition proceedings, the patent and the invention to which it related are found to meet the requirements of European Patent Convention (Art. 101(3)(a) EPC)	Il est établi que, compte tenu des modifications apportées par le titulaire du brevet au cours de la procédure d'opposition, le brevet et l'invention qui en fait l'objet satisfont aux exigences de la Convention sur le brevet européen (art. 101(3)(a) CBE).
☐	.....	.....
.....	.....	.....
.....	.....	.....
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NB: Dieses Formblatt ist nur als Information zu sehen. Die schriftliche Entscheidung hat Vorrang.
This form is provided for the sake of information only. The written decision prevails.
Le présent formulaire n'a qu'une valeur informative. La décision écrite prévaut.

19-12-2008
.....
Datum/Date

Weinachter, Robert

RW02975

Exhibit 2

Annex I MAIN REQUEST

REVENDICATIONS

1. Milieu de culture gélosé pour la détection des *Staphylococcus aureus* résistants à la méticilline, comprenant, outre des nutriments permettant la croissance desdits *Staphylococcus aureus* :

- à titre d'antibiotique : une céphalosporine choisie dans le groupe constitué de la cefoxitine, le cefmetazole, le moxalactam et le flomoxef, et
- un agent chromogène libérant un chromophore après hydrolyse avec une enzyme active chez lesdits *Staphylococcus aureus*.

2. Milieu selon la revendication 1, dans lequel ledit agent chromogène est le 5-bromo 6-chloro 3-indoxyl phosphate.

3. Milieu selon l'une des revendications 1 et 2, **caractérisé en ce qu'**il contient du 5-bromo 6-chloro 3-indoxyl phosphate et du 5-bromo 4-chloro 3-indoxyl glucoside.

4. Milieu selon l'une des revendications 1 à 3, **caractérisé en ce qu'**il comporte, en outre, au moins l'un des deux agents chromogènes suivants : 5-bromo 4-chloro 3-indoxyl galactoside et 5-bromo 4-chloro 3-indoxyl glucuronide.

5. Milieu selon l'une des revendications 1 à 4, **caractérisé en ce que** la concentration en chlorure de sodium est inférieure à 3 %.

6. Milieu selon l'une des revendications 1 à 5, **caractérisé en ce que** la concentration en antibiotique est comprise entre 0,5 et 50 mg/l.

7. Milieu selon l'une des revendications 1 à 6, **caractérisé en ce que** la concentration d'un agent chromogène est comprise entre 0,01 et 0,5 g/l.

8. Utilisation d'un milieu selon l'une des revendications 1 à 7 pour la détection des Staphylococcus aureus résistants à la méticilline.

9. Procédé de détection des *Staphylococcus aureus* résistants à la méticilline dans un échantillon, comprenant les étapes consistant à :

- inoculer un milieu selon l'une des revendications 1 à 7 avec ledit échantillon ou un inoculum issu dudit échantillon,
- incuber ledit milieu dans des conditions permettant la croissance desdits *Staphylococcus aureus,*
- détecter, sur ledit milieu, la présence desdits *Staphylococcus aureus* résistants à la méticilline, par la présence de colonies colorées.

Exhibit 3

CLAIMS

1. Agar culture medium for detecting meticillin-resistant *staphylococcus aureus,* comprising, besides nutrients for the growth of said *staphylococcus aureus*:

- as an antibiotic: a cephalosorin chosen from the group consisting of cefoxitin, cefmetazole, moxalactam and flomoxef, and

- a chromogenic agent that releases a chromophore after hydrolysis with an enzyme that is active in said *staphylococcus aureus*

2. Medium according to Claim 1, in which said chromogenic agent is 5-bromo-6-chloro-3-indoxyl phosphate.

3. Medium according to either of Claims 1 and 2, characterized in that it contains 5-bromo-6-chloro-3-indoxyl phosphate and 5-bromo-4-chloro-3-indoxyl glucoside.

4. Medium according to one of Claims 1 to 3, characterized in that it also comprises at least one of the following two chromogenic agents: 5-bromo-4-chloro-3-indoxyl galactoside and 5-bromo-4-chloro-3-indoxyl glucuronide.

5. Medium according to one of Claims 1 to 4, characterized in that the concentration of sodium chloride is less than 3%.

6. Medium according to one of Claims 1 to 5, characterized in that the concentration of antibiotic is between 0.5 and 50 mg/l.

7. Medium according to one of Claims 1 to 6, characterized in that the concentration of a chromogenic agent is between 0.01 and 0.5 g/l.

8. Use of a medium according to one of Claims 1 to 7, for detecting meticillin-resistant *staphylococcus aureus.*

9. Method of detecting meticillin-resistant *staphylococcus aureus* in a sample, comprising the steps consisting in:

- inoculating a medium according to one of Claims 1 to 7 with said sample or an inoculum derived from said sample,

- incubating said medium under conditions that allow growth of said *staphylococcus aureus,*

- detecting, on said medium, the presence of said meticillin-resistant *staphylococcus aureus* by virtue of the presence of coloured colonies.